

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

**Illinois Extension Pipeline Company,
L.L.C.**

**Application pursuant to Sections
8-503, 8-509 and 15-401 of the Public
Utilities Act – the Common Carrier
by Pipeline Law to Construct and
Operate a Petroleum Pipeline and
when necessary, to Take Private
Property at Provided by the Law of
Eminent Domain.**

**Docket No. 07-0446
(Reopen)**

**REPLY BRIEF ON REOPENING
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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November 6, 2014

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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission (“Commission”), respectfully submits its Reply Brief on Reopening (“RB”) in the above-captioned matter.

I. INTRODUCTION

Staff, Enbridge Pipelines (Illinois) L.L.C. (“Enbridge Illinois,” “Petitioner” or “Applicant”) now known as Illinois Extension Pipeline Company (“IEPC”)¹, the Pliura Intervenor (“Pliura”) and the Turner Intervenor (“Turner”) all filed initial briefs (“IB”) in this matter. The absence of a response to a specific argument raised in a parties IB in this RB does not constitute acquiescence to that argument.

¹ Based upon a review of public records of the Illinois Secretary of State, it is Staff’s understanding and belief that Enbridge Illinois merely changed its name to that of Illinois Extension Pipeline Company and that Enbridge Illinois is legally the same entity as Illinois Extension Pipeline Company.

Staff is confident that after the Commission reviews the actual facts in this matter, and disregards the unsubstantiated attacks made by parties on Staff, the ALJ and Commission, it will reject Pliura's and Turner's arguments and will adopt the recommendation of Staff witness Mark Maple that the order and certificate in good standing ("CGS") previously granted by it, be amended as requested by IEPC. Staff's RB follows.

II. ARGUMENT

A. Scope of proceeding is narrow

In their briefs, Pliura and Turner attempt to create mystery around the scope of the proceeding and inappropriately try to broaden the scope of the proceeding. (Pliura IB, 1-2; Turner IB, 10-13) The scope of the proceeding was clearly set forth in the Commission's Corrected Action of June 27, 2014. The Notice of Corrected Action stated the following:

Notice is hereby given that the Notice of Commission Action previously served today in the above captioned docket was incomplete. It should have stated the following:

Notice is hereby given that the Commission in conference on June 26, 2014 REOPENED the proceeding, pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.900, for the limited purpose of allowing Parties to address whether the Order should be amended in the manner described in the Motion to Reopen and Amend Order Concerning Diameter of the Southern Access Extension Pipeline filed by Enbridge Pipelines (Illinois) L.L.C. on May 19, 2014.

Based upon that plain Commission direction, Staff witness Maple testified that a change in pipeline diameter would in no way change IEPC's ability to meet the four criteria necessary for a CGS. He further testified that only one of the four criteria ((1) application properly filed, (2) a public need (3) the applicant is fit, willing, and able and

(4) the public convenience and necessity) is even potentially affected by the diameter change proposed by IEPC and that would be the issue of public need. (Staff Ex. 4.0, 2) Rather than limit their case to the scope set forth in the Commission's Corrected Action, Turner and Pliura are attempting to turn this matter into a brand new full certificate proceeding. (Turner IB, 12-13; Pliura IB, 1-2) If the Commission were to do that, that would be inconsistent with the law. The case of Quantum v. Illinois Commerce Commission, 304 Ill. App. 3d 310 (1999) specifically addresses that issue. The Commission should not repeat the mistake of Quantum in this proceeding. Contrary to what the intervenors claim, before the Commission could rescind its order in Docket No. 07-0446 granting IEPC a certificate, the Commission would have to provide notice to IEPC that such an action could occur. In particular, due process would require that IEPC be given notice that sets forth any alleged violation of the Act, order or rule of the Commission. Quantum, at 319. In addition to notice, IEPC would need to be provided an opportunity to be heard through the Commission holding a hearing. (Id.) None of that has occurred with respect to the CGS previously granted to IEPC.

B. Pliura and Turner make outrageous, false, and baseless statements against Staff which must be rejected.

1. Staff's discussions with IEPC were specifically allowed for by the PUA.

As Staff set forth in its IB, throughout this proceeding, Turner, rather than base its case in opposition to the IEPCs' request upon facts, chose the tactic of repeatedly attacking Staff, the ALJ, and the Commission in its filings. (Staff IB, 5-6) In its IB, Turner keeps that tactic up focusing just on Staff (e.g., Turner IB, 7, 18, 19) and are now joined by Pliura who also attacks Staff for having communications with IEPC. (Pliura IB, 4) Pliura's and Turner's arguments ignore the Illinois Public Utilities Act ("PUA"). The PUA

governs Staff's conduct with respect to other parties in proceedings before the Commission. Section 10-103 of the PUA, specifically provides that Staff engaged in investigatory, prosecutorial or advocacy functions can have discussions with other parties to the proceeding without all parties to the proceeding being present. (220 ILCS 5/10-103) That provision addressing Staff conduct is further codified in the Commission' rules at 83 Ill. Admin Code Section 200.710. Staff has repeatedly pointed out that law to Pliura and Turner, yet they continue in their briefs to ignore that law in their arguments.

2. There was nothing improper with Staff's discussions with IEPC

Libel is the publication in writing of unfounded statements or charges which expose a person to hatred, distrust, contempt, ridicule or obloquy, or tend to cause such person to be avoided, or have a tendency to injure his social or business standing, and which have as their natural and proximate consequences injury to such social or business standing, so that malice and legal injury may be presumed or implied from the mere fact of publication. (Layne v. Tribune Co., 108 FLA. 177, 146 So. 234 (1933)) US laws allow a privilege or freedom from civil action for the use of libel in proceedings. The general principle regarding the privilege is:

“ . . .that a person is not subject to be sued for . . . libel for defamatory statements in papers filed in judicial proceedings or before bodies whose duties are quasi judicial, boards or commissions. But this rule obviously does not render one immune who has made such defamatory statement; he may be dealt with under the criminal law.”

(Kimball v. Ryan, 283 Ill. App. 456 (1936))

Pliura and Turner have taken full advantage of that privilege by making outrageous, unsupported, ludicrous attacks against Staff in their briefs. In its IB, Turner claims among other things that Staff is “feeble”, “corrupt”, and “deceitful.” (“feeble ICC

Staff efforts”; “Corruption has been pervasive. The actions of Enbridge and ICC speak for themselves”; “Both Enbridge and ICC Staff are guilty of deceiving the ICC.”) (Turner IB, 7, 18, 19) In its IB, Pliura claims that Staff has acted illegally and improperly. (“Whether these communications were illegal or not is a matter to be left to the Inspector General. It is clear though that these previously undisclosed communications were improper.”) (Pliura IB, 4) No facts exist that support Pliura’s and Turner’s ludicrous statements against Staff. The lack of specifically identifying facts in the record is particularly telling. Because they can point to no facts, they are able to argue there must be something more amiss. All the intervenors can do is use baseless, inflammatory theories to somehow justify what may have gone on. They have to make this incredible leap of conjecture to what may have happened since they have no facts and no such facts exist. Accordingly, Pliura’s and Turner’s false claims should be disregarded and Pliura’s argument that Staff witness Maple’s testimony “should be completely ignored” (Pliura IB, 4) should be disregarded.

3. Staff was under no obligation whatsoever to disclose its discussions to Pliura and Turner.

Despite Pliura’s and Turner’s claims to the contrary (Pliura IB, 4; Turner IB, 18), Staff was not required to disclose its discussions with IEPC to the parties. Staff in its IB directed the Commission’s attention to two cases, Kreutzer v. Illinois Commerce Com’n and Albin v. Illinois Commerce Com’n. Those two cases are clear that certificate cases are different from eminent domain cases. This is a significant matter of law which Pliura and Turner refuse to acknowledge and accept. The appellate court in Albin explained that sections 8–406, 8-503, and 8-509 require distinct showings of necessity. As explained by the *Kreutzer* court, “Section 8–406 requires necessity for the project in

general. i.e. the provision of “more reliable electrical service” to the subject area; section 8-503 requires necessity for “the additions and improvements to implement the more reliable service”; and section 8-509 requires necessity for the “means of obtaining easements for right-of-way for the additions and improvements.” *Albin*, 87 Ill.App.3d at 439, 42 Ill.Dec. 436, 408 N.E.2d 1145. (Kreutzer v. Illinois Commerce Com’n, 404 Ill.App.3d 791, 810 (2010))²

The Kreutzer case and Albin case rebuke Pliura’s and Turner’s claims that Staff had reportable communications with IEPC prior to the time that the Commission reopened Docket No. 07-0446. Staff’s discussions with IEPC did not concern the subject matter of eminent domain, which was at issue in Docket No. 13-0446, the only open and pending docket before the Commission. It only concerned the CGS issued in Docket No. 07-0446, which had not been reopened and therefore was not pending before the Commission. Therefore, Staff was under no obligation to disclose the discussions to Pliura and Turner and appropriately did not.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff’s recommendations in this docket.

² While this Reopened matter concerns a Section 15-401 certificate as opposed to a certificate issued pursuant to Section 8-406 which was the case in Albin and Kreutzer, the relevant common element is that all matters involved certificates which must be obtained from the Commission before eminent domain authority can be granted.

Respectfully submitted,

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